



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the June 18, 2003 meeting of the
Commission on Governmental Ethics and Election Practices
held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. James O. Donnelly; Hon. David N. Ott; Dr. Terrence J. MacTaggart. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; PAC Registrar Diana True; Administrative Assistant Kendra Danforth.

At 9:29 a.m., Acting Chair Donnelly convened the meeting. The Commission considered the following items:

Selection of New Chair (not on Agenda)

Acting Chair Donnelly nominated Andrew Ketterer to be the Chair of the Commission. The motion was seconded by Mr. Ott and Dr. MacTaggart simultaneously. The members voted unanimously to select Mr. Ketterer as the new chair.

Agenda Item #1 - Adoption of the Minutes of the April 9, 2003 Meeting

Chair Ketterer proposed one amendment to the minutes of the April 9, 2003 meeting: because he was not present during the Commission members' vote on Item #9C, the vote should have been recorded as four to zero. Dr. MacTaggart moved, Mr. Donnelly seconded, and the members voted unanimously to adopt the minutes as amended.

Agenda Item #2 – John Henderson

This item was on the agenda of the April 9, 2003 meeting and has been resolved administratively by the staff. While the staff was initially concerned that Mr. Henderson had spent more than was permitted as a Clean Election Act candidate, it was later determined that he had a surplus of public funds which have been returned to the Commission.

Agenda Item #3 – Think About It

Mr. Wayne provided a brief summary of the facts. Think About It is a political action committee (PAC) which has been supporting the casino gambling initiative. When it receives goods and services, it forwards the bills and invoices to Marnell Carrao, a Las Vegas casino development company, and Thomas Tureen for payment. These contributors' payments to vendors have been reported as in-kind contributions.

Dennis Bailey, representing Casinos *NO!*, stated that voters are being misled by advertisements and literature containing the attribution “Paid for By Think About It” because these communications are actually paid for by an out-of-state company. He stated that in-kind contributions are donations of goods and services that are assigned a cash value, and that Casinos *NO!* is put in an unfair situation because it does not know how much money Think About It has on hand. Also, Think About It is at a disadvantage if Marnell Carrao’s payments are reported as business expenditures for tax purposes.

Roy Lenardson of Casinos *NO!* stated that he does not want to see this form of financing duplicated because PAC’s will move toward reporting in-kind contributions and the public will miss out on disclosure. The public cannot use the Commission’s Web site to search in-kind contributions according to payee and category, as it can with expenditures. He stated that most users of the Commission’s Web site will look at the cash contributions page of the Web site rather than the in-kind contributions page. In response to a question from Mr. Ott, Lenardson stated that the category of in-kind contributions was intended for goods and services donated to a campaign, not payments of cash for goods and services, and that Think About It had under-reported its activity by not reporting its expenditures.

Erin Lehane of Think About It responded that she spoke with the Commission’s former director about how to report the PAC’s activity. She stated that Think About It’s reports comply with the intent of the law: the PAC discloses what was paid, for what, and to whom. Ms. Lehane pointed out that the press has had no problem locating contributions to Think About It on the PAC’s reports and the Commission Web site. She expressed her view that a “paid for” attribution on an advertisement does not list all of a PAC’s contributors; it gives the public the key to knowing where to look for a PAC’s contributors on reports filed with the Commission. In response to a question from Mr. Ott, Ms. Lehane stated that she would be happy to change the PAC’s method of reporting if requested by the Commission.

Dr. MacTaggart asked why Think About It chose to report the payments as in-kind contributions. Ms. Lehane commented that Marnell Carrao is a large construction company that was most comfortable recording the PAC as a subcontractor and making direct payments to vendors.

Mr. Donnelly stated that if a complaint was filed against Think About It, the only way to audit the PAC’s spending would be to ask for Mr. Tureen’s and Marnell Carrao’s bank account statements. Ms. Lehane stated her belief that they would cooperate in any investigation, and that if the Commission subpoenaed these records, the contributors could supply redacted bank account statements. Mr. Donnelly said that the method of reporting does not result in a clear audit trail.

Mr. Ott asked the Commission staff how in-kind contributions are defined. Mr. Wayne responded that while the term ‘contribution’ is defined in the Election Law, in-kind contribution is not defined. Ms. Gardiner stated that only the reporting forms use the term in-kind contributions. She expressed a concern that reporting contributors’ payments to

vendors on Schedule A might be misleading because it does not represent cash coming into the PAC. She stated that the U.S. District Court has held that the governmental interest in regulating ballot question PAC's is not as strong as the public interest in regulating candidates, and less restrictions are permitted.

Chair Ketterer stated his understanding that an in-kind contribution was an "all other" category that included donated office space or a loaned employee, and that it wasn't intended to cover all contributions without any reporting of expenditures. Chair Ketterer asked Ms. Gardiner about the issue that Think About It is not reporting how much cash it has on hand to spend in the future. Ms. Gardiner responded that the purpose of reporting contributions and expenditures is public disclosure, and there is nothing in the statute that requires the reporting of the total assets available to the PAC.

Mr. Ott stated that he preferred the traditional approach of making expenditures; that it seems strange that a PAC organized for political activity would not have a checking account; and that to operate a PAC without a financial structure within which it would exercise its political activities is a departure. He proposed that the Commission consider directing Think About It change its method of reporting so that contributions would come into the PAC's bank account and be reported on Schedule A, and that expenditures should be reported on Schedule B.

Ms. Lehané said that while she would be willing to report the contributions to the PAC in any manner requested by the Commission, she did not have the authority to change the financial structure of the campaign.

Dr. MacTaggart said that to some extent it appears that the statute is ambiguous because in-kind contribution is not defined. He stated that he is uncomfortable requiring Think About It to report its contributors' payments as cash contributions. He stated that there appears to be sufficient disclosure in this case, and that the Commission may wish to ask the Legislature to define in-kind contribution.

Mr. Wayne said that the goods and services received by another PAC, Best Bet for Maine, have been paid for by one contributor, Capital One LLC. Capital One has paid the vendors directly for these goods and services, and the PAC has reported the payments on Schedule A and Schedule B.

Mr. Donnelly stated that if the statute and rules are unclear, he would prefer that the Commission conduct a rulemaking that would clarify how these payments should be reported in the future. He further stated that the "paid for" disclosure on Think About It's campaign material is not accurate, because Marnell Carrao and Thomas Tureen paid for the literature. Mr. Donnelly said that the intent of the disclosure is to connect the dots to indicate who is paying for the campaign material. If a contributor is writing the check to pay for the material, and the PAC's name is on the disclosure, the connection has been broken.

Chair Ketterer stated that he was concerned that the campaign literature says “Paid for by Think About It” when the literature is paid for by others. He suggested that there is no apparent violation and the matter should be postponed for further consideration which would permit all interested parties an opportunity to comment. Mr. Ott responded that Think About It should be asked to change its method of reporting.

Mr. Donnelly said the Commission needs to clarify this issue because there will be more PAC’s in 2004 that will report contributions in different ways, and that he would prefer clarifying the issue in a rule-making session. Mr. Donnelly moved that the Commission staff be instructed to research the issue and provide some options to the Commissioners on how contributors’ payments should be reported. Dr. MacTaggart seconded the motion. The members voted three to one in favor of the motion (Mr. Ott against).

Agenda Item #4 – Evangeline Hollander

Ms. Hollander filed her March Monthly Lobbyist Report two days late on April 17, 2003. The Commission considered the explanation provided in Ms. Hollander’s letter dated May 3, 2002 that her husband was hospitalized because of severe kidney failure. Dr. MacTaggart moved, Mr. Donnelly seconded, and the members voted unanimously to find Ms. Hollander in violation and to waive the monetary penalty.

Agenda Item #5 – Jeffrey Rowe

Mr. Rowe filed his April Monthly Lobbyist Report 13 days late on May 28, 2003. The Commission considered a letter from Mr. Rowe stating that he recently registered as a lobbyist and was unfamiliar with the reporting procedures. Mr. Donnelly moved, Dr. MacTaggart seconded, and the members voted unanimously to assess a penalty of \$50 for the late filing.

Agenda Item #6 – Rep. Janet L. McLaughlin

In a letter dated May 22, 2003, Representative Janet L. McLaughlin requested advice on whether she could use \$1,000 of surplus funds from her 2002 campaign for tuition in the Leadership Maine Program. She stated that this was an expense incurred in the proper performance of her duties as a State Representative. Mr. Donnelly moved that the Commission decline to permit this use of surplus funds. Mr. Ott asked the staff for examples of what expenses have been permitted in the past. Ms. Gardiner responded that one legislator had been allowed to hire a staff member to serve constituents while in office. Mr. Wayne said that he was informed that a legislator had been authorized to use surplus funds to purchase a computer for legislative duties. Dr. MacTaggart seconded Mr. Donnelly’s motion. Mr. Donnelly, Mr. Ott, and Dr. MacTaggart voted in favor of the motion, and Chair Ketterer abstained.

Agenda Item #7 – Referral of Michael A. Lewis to the Attorney General’s Office

On January 16, 2003, Michael Lewis filed the 42-Day Post-General Election Report due December 17, 2002. The candidate did not respond to two notices of the \$235.80 penalty determination, or to a telephone message from Mr. Wayne left at his residence. Mr. Donnelly moved, Dr. MacTaggart seconded, and the members voted unanimously to refer Michael Lewis to the Attorney General’s Office for non-payment of the civil penalty. Ms.

Gardiner stated her intention to draft a sworn statement for Mr. Wayne to sign that would cause pre-judgment interest to be incurred in future collection matters.

Agenda Item #8 – Referral of Cody Gillis, Sr. to the Attorney General's Office

On December 30, 2002, Cody Gillis, Sr. filed the 42-day Post-General Election Report due December 17, 2002. The candidate did not respond to two notices of the \$620.10 penalty determination. Mr. Wayne had a conversation with the candidate's wife and left a telephone message on the candidate's voicemail at his place of employment, but the candidate did not respond with any intent to pay the penalty. Dr. MacTaggart moved, Mr. Donnelly seconded, and the members voted unanimously to refer Mr. Gillis to the Attorney General for non-payment of the civil penalty.

Other Matters

The Commission requested that the staff send a letter to the Governor's office and the Legislative leadership regarding the vacancy caused by the expiration of the term of Commission member Alan Harding.

There being no further business, the Commission adjourned.

Dated: August ___, 2003

Respectfully submitted,

Jonathan Wayne
Executive Director